

DETAILED ACTION

Current Status

1. This action is responsive to Applicants' amendment of 7 January 2008.
2. Receipt and entry of Applicants' amendment is acknowledged.
3. Claims 44-54 are pending.

The rejection of claims 44-54 under 35 U.S.C. 103(a) as being unpatentable over Gagnebien et al., {US 6,024,947} and Gagnebien et al., {US 5,888,951} for the reasons set forth in the previous Office Action of 07/06/2007 is maintained.

Applicants argue that '947 Patent specifically and strongly argue against inclusion of any surfactants (other than the citric acid esters) in their composition. Applicants' arguments have been fully considered but not persuasive because prior art reference recommends the addition of few surfactants in the cosmetic composition. See column 2, lines 57-63. Additionally, one of ordinary skill can vary the surfactant level from the teaching of '947 Patent to obtain the optimum result.

Applicants argue that the '951 Patent specifically requires "at least one foaming surfactant" in addition to the C₅-C₇ carbohydrate fatty acid esters, which have a formulation problem because the pure alkyl ester is not soluble. Applicants' arguments have been fully considered but not persuasive because the prior art reference employed different types of surfactants including anionic and nonionic, a carbohydrate fatty ester with a sugar unit and at least one polyol to resolve the problem of compatibility and solubility in the cosmetic formulation. It should be noted that on page 8 of the specification of the current application, Applicants recommend the use of surfactant

mixtures (shampoos and foam baths) for the cosmetic preparations. Therefore, the use of foaming surfactant by '951 Patent should not constitute a formulation problem as argued by Applicants.

One of ordinary skill in the art would have a reasonable expectation of success in practicing the instant invention by combining the teachings of '947 Patent and '951 Patent to arrive at the instantly claimed cosmetic composition.

Moreover, all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chukwuma O. Nwaonicha whose telephone number is

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571-272-2908. The examiner can normally be reached on Monday thru Friday, 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne (Bonnie) Eyler can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Chukwuma O. Nwaonicha/
Examiner, Art Unit 1621

(for)

/Sikarl A. Witherspoon/
Primary Examiner, Art Unit 1621

Yvonne (Bonnie) Eyler
Supervisory Patent Examiner,
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